

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RODERICK L. MILES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:21-cv-00321
	)	
KILOLO KIJAKAZI, <sup>1</sup>	)	
Acting Commissioner of	)	
Social Security,	)	
	)	
Defendant.	)	

**ORDER**

This matter is before this court for review of the Memorandum Opinion and Recommendation ("Recommendation") filed on September 8, 2022, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 24.) In the Recommendation, the Magistrate Judge recommends that Plaintiff's Motion for Summary Judgment, (Doc. 15), be denied, that Defendant's Motion to Dismiss, (Doc. 19), be granted, and that this action be dismissed without prejudice. (See Doc. 24 at 7.) The Recommendation was served on the parties to this action on

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<sup>1</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi should be substituted, therefore, for Andrew Saul as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

September 8, 2022. (Doc. 25.) Plaintiff did not file objections, but instead filed a pleading entitled "Plaintiff Petition for Writ of Mandamus and Injunctive Relief," (Doc. 26), and a supplemental filing, (Doc. 28). Defendant responded to Plaintiff's filings, (Doc. 27).

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed Plaintiff's filings, (Docs. 26, 28), and has made a de novo determination in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

**IT IS THEREFORE ORDERED** that the Magistrate Judge's Recommendation, (Doc. 24), is **ADOPTED. IT IS FURTHER ORDERED** that Plaintiff's Motion for Summary Judgment, (Doc. 15), is **DENIED**, that Defendant's Motion to Dismiss Plaintiff's Complaint, (Doc. 19), is **GRANTED**, and that this action is **DISMISSED** without prejudice to Plaintiff filing a new complaint requesting a writ of mandamus if he contends that the agency is

refusing to act or proceed in his case in a way that precludes him from using the administrative process.

A judgment dismissing this action will be entered contemporaneously with this Order.

This the 25th day of October, 2022.

  
United States District Judge